

1 Rashid El Malik
 2 1320 Via Margarita
 3 Palos Verdes Estate, Ca 90274
 4 310 465-1376
 5 elmallksr@gmail.com
 Plaintiff in Pro Per

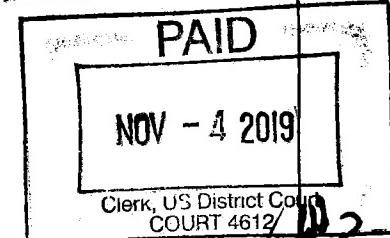
6 UNITED STATES DISTRICT COURT
 7 CENTRAL DISTRICT OF CALIFORNIA

8
 9 Rashid El Malik, Pro Se
 10 Mr. El Malik
 11 V
 12 Department of Veteran
 13 Affairs Does 1-5
 14 Defendants

LAGV1909471-PSG-GJSX
 CASE NO:

) COMPLAINT FOR MONETARY
) Damages
) (5 U.S.C. 552a (g) (1) (D)
) DEMAND FOR JURY

15
 16 JURISDICTION
 17
 18



- 19 1. This Court has jurisdiction and maintains jurisdiction over this
 matter pursuant to 5 U.S.C. § 552a (g) (1) (D). This action arises
 after Mr. El Malik discovered the defendant failed to maintain his
 record with such accuracy, relevance, timeliness, and completeness
 to assure fairness in the determination of his benefits, and 1151
 claim that was made on the basis of such records, and consequently
 a determination was made which was adverse to the Mr. El Malik.
- 20 2. Pursuant to 5 U.S.C. § 552 (g) (1) (D) Mr. El Malik may bring a civil
 action against the agency, and the district courts of the United
 States shall have jurisdiction in the matters under the provisions of
 this subsection.

VENUE

3. Venue is proper under 5 U.S.C. § 552 (g) at all time herein Mr.
4. El Malik resided in Los Angeles California County, a County
5. within the Central District.
6. The Plaintiff Rashid A. El Malik resides at 1320 Via Margarita
7. Palos Verdes Estate, CA 90274.
8. The Department of Veterans Affairs is an appropriate
9. Defendant under section 552 (g) (1) (D)

STATEMENT OF FACTS

13. 6. At all times herein mention Mr. El Malik a Vietnam Veteran while
14. serving his country was wounded in Vietnam after being hit in his
15. knee with shrapnel. Over the years he developed additional
16. disabilities and disabilities secondary to his service connected knee.
17. Those disabilities are as follows;

18. 100% Post Traumatic Stress Disorder (PTSD)

19. 21. 100% loss of functional use of the right knee

20. 22. 100% loss of functional use of the left knee

21. 24. 100% loss of functional use of the right wrist

22. 26. 100% loss of functional use of the left wrist (Pending)

23. 27. 50% migraine headache

24. 29. 20% lower spine (Pending Increase)

25. 30. 100% loss of use of a creative organ

26. 31. 32. 100% non-service connected emphysema (COPD)

1 7. In 2004, Mr. El Malik underwent bilateral knee replacements.

2 Unfortunately three months into his rehab Mr. El Malik fell
3 causing additional injury to his left knee and had to abandon
4 his rehab which he later developed apathropy in his lower
5 extremities .

6 8. In 2012, Dr. Dean C. Norman Chief of Staff for the VA Greater
7 Los Angeles Healthcare System issued Mr. El Malik a motorized
8 wheelchair based on cardiopulmonary restriction from COPD,
9 bilateral carpal tunnel and gait long distance gait impairment
10 due to bilateral knee pain. In 2014, while in the Vocational
11 Rehabilitation and Employment Services (VR&E) Independent
12 Living Program 38 U.S.C. § 3120 Mr. El Malik applied for
13 accommodation to adapt his home to accommodate his
14 wheelchair. Mr. El Malik was granted 15 items for adaption,
15 and denied 12 items.

16 9. Mr. El Malik appealed the denial of the 12 items to the Board of
17 Veterans Appeals.

18 10. At this point and time the Department of Veterans hereinafter,
19 (VA) especially VR&E; had actual knowledge of this 70 year old
20 disabled veteran physical conditions. The VA knew because it was
21 well documented that Mr. El Malik was at a high risk for falling as his
22 coordination and balance was severely impacted by his service
23 connected disabilities identified as loss of functional use of his lower
24 extremities, lower spine disorder at the L1, L2, and L5, loss of
25 functional use of his right and left wrist, and cardiopulmonary
26 restriction disorder. VR&E service had reviewed the record and
27 concluded MR. El Malik home had to be adapted to accommodate his
28 disabilities.

1
2 11. In 2016, while Mr. El Malik was going through the process of
3 waiting for the VA to process the 15 items the VA entered into a
4 contractual agreement with a contractor to install a solar panel to
5 operate an invalid lift. The lift operation would have enabled Mr. El
6 Malik to use the chair as much as possible in his home while waiting
7 for the approval of the adaption items as well as to enter and exit
8 his home. The VA without notifying Mr. El Malik abandoned the
9 project.

10
11 12. Mr. El Malik subsequently fell down a flight of stairs inside
12 his home sustaining a broken clavicle bone requiring a metal plate, 4
13 broken ribs and a concussion.

14
15 13. Mr. El Malik filed a 5 million dollar Federal Tort Claim suit in
16 the District Court on June 11, 2017, alleging that the VA failed to
17 exercise due care, failed to exercise the required degree of care, and
18 breached the duty owed to Mr. El Malik by failing to protect him from
19 unreasonable risk, and foreseeable risk which caused Mr. El Malik to
20 suffer the 4 broken ribs, a broken clavicle bone, and concussion.

21
22 14. Mr. El Malik appealed the denied 12 items and the Board of
23 Veterans Appeals (Board) in January 2018, remanded the case back
24 to the VR&E with an Order to provide Mr. El Malik with a
25 Compensation examination (C&P) and expeditious handling because
26 of his severe physical condition. The Doctor was instructed to
27 determine if the 12 items was medically necessary or a desire.

28
29 15. In May of 2018, the C&P examiner concluded 6 of the
30 requested accommodations was a medical necessity, and Mr. El
31 Malik primary care doctor concluded in his examination offered his
32 medical opinion that all the items were medically necessary.
4

1 16. The VR&E Chief Anthony Roebuck department denied all the
2 items in spite of the C&P examiner and Mr. El Malik primary care
3 doctor conclusion. In September 2018, Mr. El Malik appealed the
4 denial back to the Board.

5 17. The Board upheld the decision with skepticism by stating; "*the*
6 *Board has serious concerns regarding the Veteran's credibility as it pertains*
7 *to the extent of his disabilities and their effect on his ability to safely access*
8 *portions of his home.*"

9
10 18. Mr. El Malik discovered a memorandum on a VA form 27-0820
11 (Report of General Information) entered into the record just before
12 he appealed his case back to the Board that revealed the Chief of
13 VR&E Anthony Roebuck had entered false statements into the record
14 that pointed to the Board's skepticism.

15
16 19. The statements contained in the memorandum were untrue.
17 Upon discovery of the memorandum Mr. El Malik provided the Los
18 Angeles Director's office with Court documents rebutting the
19 memorandum that the law suit was thrown out because VA found
20 Mr. El Malik lied about the incident and that he did not fall down the
21 stars at his home in California but fell off a ladder in Pennsylvania.
22 That statement was refuted after Mr. El Malik provided the Los
23 Angeles Regional Office Director Emmett O'Meara with the District
24 Court summary judgment dismissing Mr. El Malik case based on
25 jurisdiction, "not because he lied", and the 9th Circuit dismissing the
26 Defendant's summary judgment ordering the case to be brief to
27 determine if the court has jurisdiction.¹

28
29
30
31 1 The case is currently before the 9th circuit of appeals and the Court provide Plaintiff with Pro
32 Bono counsel to brief the Court.

1 20. The memorandum also contained statements that Mr. Roebuck
2 stated Mr. El Malik sued the VA for 200 million regarding the fall.
3 The statement was false and a total exaggeration of the facts.
4 Documents will show Mr. Roebuck knew the exact amount of the law
5 suit because he had continued communication with the U.S.
6 Assistance Attorney, Margaret M. Chew, and Anthony Taylor of the
7 General Counsel office pacific District South (02). Since Mr. Roebuck
8 was presently informed of the law suit and communicated with the
9 U.S. Attorney and the U.S. Attorney office his statement was an
10 embellishment of the facts.

11 21. Mr. El Malik discovered an email from the author of the
12 memorandum a VA agency employee Laura A. Georgi that stated
13 she contacted Mr. Roebuck via email, and informed him on
14 September 21, 2018, that Mr. El Malik filed a 1151 claims for
15 injuries he sustained in his home and that the record indicated VR&E
16 was possibly involved in handling accommodations to adapt Mr. El
17 Malik home after the injuries in September 2016. She asked Mr.
18 Roebuck to provide any record or notes that could provide more
19 information as 1151 service connection does cover disability or
20 death caused by training and rehab services provided as part of an
21 approved rehabilitation program.

22 22. In Ms. Georgi memorandum she stated Mr. Roebuck called her
23 in response to her email sent to him earlier during the day and
24 stated Mr. Roebuck personally witnessed Mr. El Malik walking for 2+
25 hours at a time even though he's service connected for loss of use of
26 his feet and high levels of Special Monthly Compensation (SMC) he
27 stated his observation was reported to the Office of Inspector
28 General "but Nothing Has Been Done."

1 23. Finally Mr. Roebuck stated VR&E has not touch the stairs in
2 question partly because Mr. El Malik turned out to be untruthful
3 about the fall in question and because the lifts for his wheelchair
4 have been installed in other parts of his home to be able to access
5 the 2nd floor so there was no reason for Mr. El Malik to be on the
6 stairs.
7

8 24. The statement the lifts for his wheelchair have been installed
9 in other parts of his home to be able to access the 2nd floor so there
10 was no reason for the Mr. El Malik to be on the stairs is false and
11 unsupported by the facts which has forced Mr. El Malik to ambulate
12 up and down his stairs without the aid of his wheelchair causing
13 unreasonable and unnecessary pain, physical harm, and
14 unreasonable delays in the adaption of his home addressing the
15 stairs.
16

17 25. The memorandum was and still is a key factor in denying Mr.
18 El Malik adaption of his home by the Board, the denial of his 1151
19 claim, and the slow process of the adaption of his home because the
20 document suggested that this 70 year old veteran was not as
21 disabled as the 40 years of medical evidence revealed.
22

23 26. The Board has filed a motion with the Veterans Court to
24 remand the denial of the items for the adaption of Mr. El Malik home
25 and Ordered the removal of the memorandum and a new decision
26 De Novo.
27

28 27. Mr. El Malik filed a FOIA claim and discovered Mr. Roebuck
29 released his personal information to an unauthorized third person
30 without his consent in violation of 5 U.S.C. § 552a (i) (1) because it
31 now appears based on the memorandum the release was intentional.
32

FIRST CAUSE OF ACTION

LIBEL

AS AGAINST THE DEPARTMENT OF VETERANS AFFAIRS

(5 U.S.C. § 552a (g) (1) (D)

Mr. El Malik repeats and re-alleges each and all allegations contained in paragraph 6-27.

28. Libel is defined by the Black Law dictionary ninth edition as a defamatory statement expressed in a fix medium such as a written statements.

29. Mr. El Malik alleges the Defendant is liable for the false and defamatory statements by Mr. Roebuck the Chief of VR&E services made to Ms. Georgi who then memorialize the statements which became a permanent record. The undisputed false statements which caused harm to Mr. El Malik without the aid of research into the truthfulness of the statement was that Mr. El Malik law suit was thrown out of the District Court because the VA found Mr. El Malik lied about the incident and that he did not fall down the stairs at his home in California but fell off a ladder in Pennsylvania. The statement caused harm to Mr. El Malik because the Board used the statement to suggest Mr. El Malik credibility as it pertains to the extent of his disabilities and their effect on his ability to safely access portions of his home was suspected. Once the Board found the statement to be untrue the Board filed a motion to remand De Novo and have the document removed.

30. The second statement which caused harm to Mr. El Malik without the aid of research into the truthfulness of the statement was the lifts for his wheelchair have been installed in other parts of his home to be able to access the 2nd floor so there was no reason

for the Mr. El Malik to be on the stairs. The statement caused harm to Mr. El Malik because the Chief of VR&E Anthony Roebuck made decisions denying Mr. El Malik accommodation and stated the reason why his Department has not touched the stairs because Mr. El Malik turned out to be untruthful about the fall. Mr. Roebuck was present in Mr. El Malik home before he did the memorandum during the meet and greet with the contractors, sub-contractor, architect, and counselor; therefore, he knew the home was not equip with lifts to address the stairs. Mr. Roebuck was and still is in communication with the Contracting Officer Kevin Searles who responsibility is to install an elevator lift to accommodate the stairs. Mr. El Malik has been waiting over one year for the installation and the stairs has not been addressed.

31. Mr. Roebuck false statement Mr. El Malik sued the VA for 200 million regarding the fall was a total exaggeration of the facts. Documents will show Mr. Roebuck knew the exact amount of the law suit because he had continued communication with the U.S. Assistance Attorney, Margaret Chew, and Anthony Taylor of the U.S. Attorney office via e-mails. Since Mr. Roebuck knew or should have known the amount of the law suit his embellishment of the facts casted a suspicion that Mr. El Malik was acting out of Greed which goes to his conduct and reputation.

32. In Ms. Georgi memorandum she stated Mr. Roebuck stated he personally has witnessed Mr. El Malik walking 2+ hours at a time even though he's service connected for loss of use of the feet and high levels of SMC and reported the incident to the Inspector General Office but nothing was done.

Mr. Roebuck has attempted to alter the medical facts predicated upon his alleged observation. Mr. El Malik had a C&P examination in May 2018 order by the Board where the medical examiner informed Mr. Roebuck that;

"The claimant's post-service medical records have shown repeat falls when he has tried to climb few stairs or walk more 15 feet. These falls are secondary to his service connected knee and wrist conditions; therefore, his movement through-out his house is limited by his stair climbing and poor balance. Hence, some type of single or multiple lift systems will be required to move the claimant from one level of his home to another.

Mr. Roebuck refusal to accept the medical facts as presented to him by the VA C&P examiner clearly shows his maliciousness attempt to insert his layman observation which was rejected by the Board and the Inspector General Office.

SECOND CAUSE OF ACTION

SLANDER

AS AGAINST THE DEPARTMENT OF VETERANS AFFAIRS

(5 U.S.C. § 55a (g) (1) (D))

Mr. El Malik repeats and re-alleges each and all allegations contained in paragraph 6-32

1 33. Slander is defined as a defamatory assertion expressed in a
2 transitory form for example speech.
3
4

5 34. The same analysis used for libel is used for slander; whereas,
6 Mr. Roebuck made false statements to a secondary source who then
7 published the statements.

8
9 **THIRD CAUSE OF ACTION**

10 **SLANDER PER SE**

11 **AS AGAINST THE DEPARTMENT OF VETERANS AFFAIRS**

12 **(5 U.S.C. § 55a (g) (1) (D))**

14 Mr. El Malik repeats and re-alleges each and all allegations contained
15 in paragraph 6-34.

17
18 35. Slander per se is defined as special damages does not have to
19 be proven because the statement imputes on the Plaintiff, but not
20 limited to moral turpitude, loathsome disease, unchastity and or
21 conduct that would adversely affect one's business or profession.

23
24 36. The same analysis used for libel is used for slander per se;
25 whereas, Mr. Roebuck made false statements to a secondary source
26 who then published the false statements, and as a direct result of
27 the published false statements imputed on Mr. El Malik character
28 whereas sources who accepted the false statements as the truth
29 adversely affect Mr. El Malik's reputation and resulted in the denial
30 of his disability claim and unreasonable delays in the adaption of his
31 home.

1
2 37. Mr. El Malik has constitutional protection of a property right for
3 due process for the protection of his disability claim. Mr. Roebuck
4 action of inserting false statement into the record violated Mr. El
5 Malik constitution protection See Cushman v Shinseki 576 F.3d 1290
6

7
8 **FOURTH CAUSE OF ACTION**

9 **FOIA**

10 **RELEASE OF UNAUTHORIZED PERSONAL DOCUMENTS**
11 **AS AGAINST THE DEPARTMENT OF VETERANS AFFAIRS**
12 **(5 U.S.C. § 552a (i) (1))**

13
14
15 Mr. El Malik repeats and re-alleges each and all allegations contained in
16 paragraph 6-37

17 38. Mr. El Malik requested a copy of the construction contract to
18 adapt his home. Mr. Roebuck has refused to apply section 5 U.S.C. §
19 (D) (1) properly thereby refusing to release the contract. Mr.
20 Roebuck violated Mr. El Malik privacy rights by releasing information
21 to a third party without his consent. Based on the memorandum it
22 appears the release was intentional.

23
24
25 **Conclusion**

26
27
28 Mr. El Malik repeats and re-alleges each and all allegations contained in
29 paragraph 6-38

39. Mr. Roebuck has disregarded the VA's core values of integrity, commitment, advocacy, respect and excellence and acted with what appears to be a malicious and willful intent to deprive this 70 year old veteran of the adaption items he needed to protect him in his home and community. The false statements were libel, slanderous, defamatory, and suggested Mr. El Malik was not as disabled compared with over 40 years of medical evidence identifying Mr. El Malik disabilities.

PRAYER FOR RELIEF

40. Wherefore, Mr. El Malik respectfully prays for the following:

Mr. El Malik request this Court to award damages against the Department of Veterans a Federal Agency in the sum of no less than \$400,000.00 ACTUAL DAMAGES and 1.5 MILLION FOR; pain suffering, insomnia, loss of consortium, emotional stress, and legal fees, and request this Court to award cost of for all and such other relief as the Court may deem proper.

Plaintiff request Jury Trial.

Respectfully Submitted

Rashid El Malik, Pro Se

Monday November 4, 2019

ORIGINAL

PROOF OF SERVICE

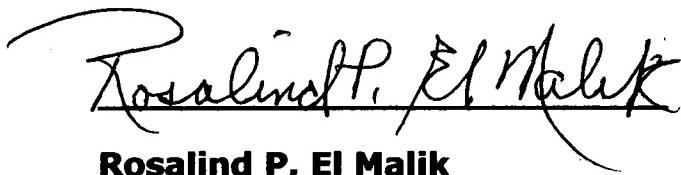
**On November 4, 2019, I served the following documents:
COMPLAINT AND SUMMON to the defendant in this action Certified
postal pre-paid by placing the original true copies in US mail to:**

Attention:

**CIVIL PROCESS CLERK
OFFICE OF THE UNITED STATES ATTORNEY
ROOM 7516 FEDERAL BUILDING
300 N LOS ANGELES ST
LOS ANGELES CA, 90012**

**ATTORNEY GENERAL OF THE UNITED STATES
US JUSTICE DEPARTMENT
950 PENNSYLVANIA AVE N.W.
WASHINGTON DC 20530**

**I swear under the penalty of Perjury under the laws of California
that the above is true and correct.**



Rosalind P. El Malik

Dated: MONDAY NOVEMBER 4, 2019